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researches of Dr. U. B. Phillips in Georgia politics, reverses the long-accepted verdict of guilty and pronounces the charge at least not proven and probably false. Martin Van Buren's late rehabilitation by Mr. Shepard is taken with some allowance by Professor Fish, who finds no reason to reject the old opinion that the little magician of Kinderhook did his most characteristic work in the realm of politics rather than in that of statesmanship.

The climax of spoils politics is placed by Professor Fish in the two decades from 1845 to 1865. With the end of the Civil war the movement for reform began in earnest, and has progressed to substantial triumph.

The historical spirit manifested by the author is of the most judicial and enlightened type. His philosophical analysis of the principles involved in the matter of spoils and patronage is in general admirable. It would perhaps have been proper to have gone a little further back in time than the Dutch Republic in tracing the pedigree of the idea of rotation in office. Aristotle, whom the publicists of twenty centuries closely followed, made alternation in commanding and obeying a leading principle in his conception of the best popular state; and Harrington's *Oceana*, much read by John Adams and Daniel Webster, dwelt at great length on the idea of an "equal rotation" as essential to a true commonwealth. It may be likely that the introduction of rotation in the United States was as much due to this philosophical tradition as to the "old Dutch custom" to which the author refers (p. 80). But he is of course thoroughly committed to the doctrine that rotation and spoils are normal accompaniments of democracy in certain of its stages, wherever democracy becomes established.

Professor Fish's printer has disguised Mr. McAneny as "Mr. McAnery" (p. 227). It is to be regretted that the responsibility for "transmogrified" (p. 81) and "fearsomely" (p. 106) cannot also be placed on the printer.

WM. A. DUNNING.

Elements of International Law. By HENRY WHEATON, LL. D.

Fourth English edition by J. BERESFORD ATLAY, Lincoln's Inn, Barrister at Law. London, Stevens & Sons, 1904.—xxxv, 848 pp.

It seems at first sight rather remarkable that no edition of this classic among American legal text books should have appeared in the United States since the publication of Dana's edition in 1866, whereas in England it has meanwhile passed into its fourth edition. This is

probably to be attributed to the indifference to the whole subject of foreign relations which may be said to have prevailed in the United States from the Geneva Arbitration to the Spanish-American war. In England, and in Europe generally, the interest in international law has been unabated. Moreover, the fact that Wheaton's *Elements* has for many years been the text book prescribed for candidates taking examinations for the British foreign service has caused an additional demand for the work in England, aside from the needs of publicists and lawyers. The author and the book have therefore had a somewhat similar fate in being more honored abroad than at home. In this country, on the other hand, Hall's *Treatise* is the work on international law now most generally used and referred to as authority.

In a former number of the *QUARTERLY*,¹ the present reviewer examined the last edition of Hall's work, which was also prepared by Mr. Atlay. The reviewer was not then aware that Mr. Atlay was engaged in editing a new edition of Wheaton, and he took occasion to indicate the omission or inadequate treatment of certain events in the recent history of American foreign relations which ought properly to be included in a discussion of the development of international law in the last decade. It is evident that Mr. Atlay has divided his topics and has assigned to the new edition of Wheaton those which are of a more strictly American character.

The present edition of Wheaton is really the fourth edition of that work by A. C. Boyd. Boyd's edition is familiar to students of the subject, inasmuch as it was the only form in which the book was readily obtainable since the editions of Lawrence and Dana went out of print. The labors of Mr. Atlay, therefore, consist in a re-editing of Mr. Boyd's notes, by making certain omissions and verbal corrections and by adding historical summaries which bring the several topics down to the date of the present edition. A comparison of the last edition by Boyd with the present one would indicate that Mr. Atlay's work amounts in all to about twenty pages.

The new matter supplied by the present edition is chiefly the following: A note on the position of China and Japan with respect to international law (pp. 22, 23); some remarks on the Monroe doctrine (p. 98); the Greek war of 1897 (p. 118); the Alaskan boundary question (p. 268); the Panama canal and the Hay-Pauncefote treaty (p. 319); the Hague peace conference (p. 405); the substitution of the text of the Hague convention with respect to the laws and customs of war on land for the text of the declaration of the Brussels confer-

¹ September, 1904, vol. xix, p. 494.

ence of 1874 (pp. 556 *et seq.*) ; the case of the "Bundesrath," involving the question of contraband as affected by ultimate destination (p. 670) ; and submarine cables and wireless telegraphy in war (p. 721). Having been published at the outbreak of the war in the Far East, there is of necessity only a bare reference to a few incidents marking its beginning.

Among the subjects omitted we note the following : There is no reference to the case of Cuba, either in connection with the recognition of independence or with intervention. The legal basis for intervention in Cuba was clearly indicated by Sir Frederick Pollock, in a letter to the London *Times* in April, 1898, and was correctly referred to the principle of the abatement of a nuisance.

There is no reference under semi-sovereign states to the Transvaal, nor to the much debated question of British suzerainty over it. Indeed there is practically no notice taken of the questions raised by the Boer war respecting the laws of the war. The practice of the United States and Spain as to enemy vessels in port on the outbreak of the war of 1898, and of the United States with respect to Spanish vessels sailing for United States ports prior to the same date, and the allowance to Spanish vessels in blockaded ports of thirty days for departure, are not mentioned ; nor is there reference to the adoption by the parties, as a *modus vivendi* during the war, of the "additional articles of 1868" of the Geneva convention.

The statement of the Alaskan boundary question would have been clearer if it had contained a quotation in full of clause two of article iv of the treaty of 1825 defining the boundary. Aside from the point as to the true "Portland channel," the crux of the whole question was the interpretation to be given to this clause. To most Americans who had given the subject attention, it seemed scarcely necessary, in order to refute the claims of the Canadians, to do more than quote the language of the treaty.

In connection with the work of the Hague tribunal (p. 407) the bare reference to the "Pious Fund" case and that of the preferential claims against Venezuela, seems totally inadequate. There is no statement of the facts or any attempt to examine the questions of law involved. Reference should have been made here to the submission to the Hague court in August, 1902, of the dispute between Japan on the one side and Great Britain, France and Germany on the other, as to the right, under treaties with these powers, to tax buildings erected on perpetual leasehold property in Japan. A decision against Japan has been reached since the publication of the book. Although the editor makes

reference in his preface to the "increased resort to arbitration" since the publication of the last edition, he has nothing to say of the Bering sea case. From a juristic point of view this arbitration was of greater importance than that of the Alaskan boundary. The latter involved chiefly the construction of a treaty provision, while the former decided questions of substantive law.

About forty recent decisions of the law courts are cited or referred to, the great majority of which are English, and of these last about half relate to the conflict of laws. About a dozen late decisions of the supreme court of the United States are cited, which include some of the cases growing out of the Spanish-American war. One case of some importance, that of the "*Paquete Habana*,"¹ is cited merely to show "the value attached to text writers in the American courts." There is no statement of the question of law decided; *viz.* the exemption of coast fishing vessels from capture in time of war. As a leading case in American law, and one marking a step in the development of international law as administered by the courts, it ought not to have been slighted. In one instance, however (section 519 *a*), the decision in the case of the "*Adula*" has caused a modification in the language of the paragraph, so far as relates to sailing to a port known to be blockaded.

It is due to Mr. Atlay to say that his work, though almost exclusively of an historical character, is carefully prepared and that no important misstatements have been observed. It is to be regretted, however, that an apparent desire to avoid the mistake of other editors in overloading a text with notes has led him to compress his annotations unnecessarily, and at the same time to abstain from the discussion of legal principles.

New matter in the appendices is the British neutrality proclamation and rules of February 10-11, 1904, and the Anglo-French agreement of April 8, 1904.

The general arrangement of the book in sections is the same as that originally made by Dana and adopted by Boyd. The table of contents by sections is restored and numbered, which is an improvement over the briefer table of the earlier edition. The type is large and is therefore, so far as Wheaton's text is concerned, preferable to the American editions. Moreover, the notes are placed in smaller type in the body of the page, so that whether they are read or omitted, there is not the same hiatus in the argument that usually follows the reading of a footnote.

JAMES F. BARNETT.

GRAND RAPIDS, MICHIGAN.

¹ 175 U. S. 677.

¹ 175 U. S. 361.